

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES L. BROOKS,

Plaintiff,

No. CIV S-03-2343 DFL PAN P

vs.

EDWARD S. ALAMEIDA, et al.,

Defendants.

ORDER

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Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On August 28 and 30, 2006, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Neither party has filed objections to the findings and recommendations.

The court has reviewed the file and finds both findings and recommendations to be supported by the record and by the magistrate judge's analysis. Accordingly, IT IS HEREBY ORDERED that:

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1 1. The findings and recommendations filed August 28, 2006 are adopted in full;

2 2. Defendants' January 6, 2006 motion to dismiss, joined by defendant Haak on
3 June 5, 2006, is granted;

4 3. Except as provided in paragraph 4 of this order, plaintiff's claims against all
5 defendants except defendants Rohlfinding and Watson are dismissed without prejudice for failure to
6 exhaust administrative remedies prior to suit;


7 4. Plaintiff's claim against defendants Alameida, Hubbard and Johnson that the
8 prison lockdown deprived him of access to necessary physical therapy and rehabilitation services
9 is dismissed with leave to amend;

10 5. Plaintiff is granted a period of thirty days from the date of this order in which
11 to file a motion for leave to file a second amended complaint that states a cognizable claim for
12 relief against defendants Alameida, Hubbard, and/or Johnson¹;

13 6. Defendant Rohlfinding is directed to file and serve an answer to the amended
14 complaint within twenty days from the date of this order; and

15 7. Plaintiff's motion for a preliminary injunction is denied.

16 DATED: 9/28/2006

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20 DAVID F. LEVI
21 United States District Judge
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25 ¹ Plaintiff is cautioned that any proposed second amended complaint must be complete in
26 itself without reference to a prior pleading. See Local Rule 15-220. For that reason, plaintiff
should include his claims against defendants Watson and Rohlfinding in a proposed second
amended complaint.